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# FINAL REGULATIONS

Adopted April 9, 2003

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## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text proposed at the PROPOSED stage. Underlined text indicates new text added since publication of the proposed regulation. Brackets indicate changes made since publication of the proposed regulation .

Language which has been stricken indicates proposed text for deletion.

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## CHAPTER 20.

REGULATIONS GOVERNING THE *MONITORING, APPROVAL, AND CERTIFICATION*

*PROCESS OF JUVENILE JUSTICE PROGRAMS.*

~~PART I.~~

~~GENERAL PROVISIONS.~~

### **6 VAC 35-20-10. Definitions.**

The following words and terms when used in this chapter shall have the following ~~meaning,~~ *meanings* unless the context clearly indicates otherwise:

*["Administrative probation"* means the status granted to a program or facility in an emergency situation at the discretion of the director pending the next regularly scheduled board meeting.]

*["Administrative review"* means the audit of the administrative records of a local jurisdiction or governing commission. The administrative review involves only a review of documentation housed at a central office.]

*["Appeal"* means the action taken by a unit, facility or program administrator after an audit when there is disagreement with a team finding of noncompliance.]

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## DRAFT Final Regulations

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~~"Appropriate regional administrator" or "chief" means the regional administrator, Chief of Operations for Learning Centers or Chief of Operations for Community Funding responsible for planning, implementing, coordinating, monitoring and evaluating the program in question.~~

~~"Board" means the Virginia Board of Youth and Family Services (BYFS) Juvenile Justice.~~

~~"Certification" means the board's formal finding that a program meets (i) all mandatory standards; (ii) an acceptable percentage of all other standards as indicated in the chart at 6 VAC 35-20-100; and (iii) the requirements of applicable board policies; and is consequently approved to operate for a specific period of time.~~

~~["Certification audit report" or "audit report" means the report prepared for review by the board.]~~

~~"Certification inspector" means a staff member of the DYFS Certification Unit who serves as the chairperson of the certification team. This person is referred to as team leader.~~

~~["Certification status" means the type of certification approved by the Board for a given program, including the three-year period of time specified in the certificate during which the program must maintain its standards compliance levels and have acceptable plans of action.]~~

~~"Certification team" means those persons designated by the Department of Youth and Family Services to conduct compliance audits, including the Certification Inspector.~~

~~"Certification training" means training provided by the certification unit for prospective team members or facility staff in need of audit preparation assistance.~~

~~"Certification unit" means the organizational unit of the Department of Youth and Family Services responsible for organizing and facilitating inspections of programs funded by the department.~~

~~"Certification unit manager" means that person employed by the Department of Youth and Family Services responsible for the administration of the certification unit.~~

~~["Certified" means that the board has approved a program to operate under the conditions set out in 6 VAC 35 -20 - 100 has achieved an acceptable level of compliance with standards promulgated by the board.]~~

~~"Chief of Operations for Community Funding" means the individual responsible for the planning, implementing, coordinating, monitoring and evaluating of the DYFS funding of locally or privately operated community programs.~~

~~"Chief of Operations for Information and Evaluation" means that individual employed by the Department of Youth and Family Services accountable for the administration of information and evaluation.~~

~~"Chief of Operations for Learning Centers" means that individual employed by the Department of Youth and Family Services accountable for the administration and operation of learning centers.~~

~~"Complaint" means a report of a problem or concern made by staff, clients, parents or guardians, other agencies or the general public about a facility or program certified by the Board of Youth and Family Services.~~

~~["Compliance" means meeting the requirements of a standard or an applicable Board policy.]~~

~~"Compliance Certification audit" means an on-site review [investigation visit] by a certification team of designated personnel to assess a program's compliance with applicable board standards promulgated by the board and policies, the results of which are reported to the board for certification action.~~

~~"Compliance documentation" means those records, reports, pictures, blueprints, observations and interviews required to verify a program's adherence to standards.~~

~~"Decertification Decertified" means the Board of Youth and Family Services has determined that a previously certified program has does not met a minimum acceptable level of compliance with standards meet the requirements to be certified and is no longer approved to operate.~~

~~"Deficiency" and "noncompliance" means that the program does not meet, or has not demonstrated that it meets, the requirements of a board standard or policy or does not comply with the Virginia Juvenile Community Crime Control Act local plan approved by the board.~~

~~"Department" means the Virginia Department of Youth and Family Services (DYFS) Juvenile Justice.~~

~~"Deputy Director for Programs" means the individual employed by the Department of Youth and Family Services, and designated by the director as the administrator of program operations and funding.~~

~~"Deputy Director for Administration and Finance" means the individual employed by the Department of Youth and Family Services, and designated by the director as responsible for the management of administrative and financial operations.~~

~~["Director" means the Director of the Department of Youth and Family Services Juvenile Justice.]~~

~~"Interim audit" means an audit that occurs by special order of the board or the director.~~

~~"Interim certification report" means the program's verification of continued compliance with the standards.~~

~~"Life, health, safety standards (LHS) violation" means those standards related any action or omission that results in noncompliance with a board standard or policy and causes an immediate and potentially serious threat to the life, health or safety of the youth and or staff in residential programs as defined by the board that must be maintained in 100% compliance at all times.~~

~~"Mandatory standards" means those standards of performance for nonresidential programs as defined by the board which must be maintained in 100% compliance at all times.~~

~~"Monitoring visit" means an on-site review by designated personnel to assess a program's compliance with board-approved standards, policies and, when applicable, Virginia Juvenile Community Crime Control Act local plan.~~

~~"Newly opened facility" means both (i) a facility that is newly constructed and (ii) an existing facility that is being placed in service as a residential program.~~

~~"Not applicable standards" means standards which are not relevant to the program because of the structure of the program or the services it provides.~~

~~"Plan of action" means a written document which that explicitly states what has been or will be done to bring all deficiencies into compliance with board standards and policies.~~

~~"Preparatory audit" means an on-site review of a new program by regional office staff prior to an audit by a certification unit staff member to provide guidance in audit documentation and standards compliance.~~

~~["Probationary status" "Probation" means the temporary status granted to a program by the Board of Youth and Family Services to provide a period of time in which to come into compliance with standards.]~~

*"Program" means a juvenile residential facility [, court service unit,] or a nonresidential service subject to standards or policies of the board.*

*]"Program administrator" means the staff member responsible for the operation of a program, facility or institution.]*

~~*"Quality of life and services statement" means the portion of the audit report to the board which describes issues regarding staff (such as motivation, commitment to the program, personal development, interaction between staff and clients and team work), the building (such as suitability of building and furnishings for program and population, provisions for privacy, maintenance, safety); and program (such as use of community resources, community interaction, interagency cooperation, individualized treatment).*~~

*"Random sampling" means a system for selecting programs for monitoring visits, by which all programs in a given category have a similar likelihood of being selected for a visit, but which may not result in any given program receiving a monitoring visit during any given period of time.*

~~*"Regional administrator" means the individual responsible for the direction of activities in a designated area in the Commonwealth to include planning, implementing, coordinating, monitoring, and evaluating DYFS and DYFS-utilized programs.*~~

~~*"Regional office staff" means those individuals assigned to a particular regional office responsible for assisting the regional administrator in the duties described above.*~~

~~*"Related professional agencies" means any unit within the Department of Youth and Family Services or any public or private agency, which serves a similar clientele or provides services similar to those of the program to be certified.*~~

*"Substantial compliance" means that the program meets all applicable mandatory standards and at least 90% of all other applicable standards.*

~~"Standard Systemic deficiency" means that the performance of a unit, facility or program, or evidence supporting this performance, is insufficient to meet the requirements of a standard deficiencies have been found in three or more separate but related standards and have been cited by certification personnel as indicating that a program may have significant problems in a given area [such as record-keeping, training, health services, social services, security, etc.].~~

~~"Suggested compliance determination list" means a list of suggested documents or information sources which can be used to verify compliance with a standard.~~

~~"Unannounced interim visits" means periodic visits to a facility to monitor compliance with standards.~~

["Unresolved life, health or safety violation" means a life, health or safety violation that is not corrected in an approved corrective plan of action or that has recurred after the life, health or safety violation was noted during an interim monitoring visit.]

*"Variance" means a decision by the board of Youth and Family Services to relieve action that relieves a program of from having to meet a specific standard or develop a plan of action for a specified that standard, either permanently or for a determined period of time, when (i) waiving these requirements will not result in a threat to the life, health or safety of juveniles or staff; (ii) enforcement will create an undue hardship; (iii) the standard is not specifically required by statute or by the regulations of another government agency; (iv) the standard is not designated as mandatory by the board; and (v) juveniles' care or services would not be adversely affected.*

["Waiver" means a formal statement from the Department temporarily excusing a program from meeting a non-mandatory standard pending board action on a formal variance request. ]

**6 VAC 35-20-20. Code of Virginia References. (Repealed.)**

Code of Virginia:

~~§ 16.1-233. Department to develop court services,...appointment and removal of employees, salaries.~~

~~§ 16.1-234. Duties of Department...(to insure that minimum standards are adhered to).~~

~~§ 16.1-311. Board to prescribe certain standards; how order of board enforced.~~

~~§ 16.1-312. Visitation and management of detention homes.~~

~~§ 66-10. Board to adopt regulations for the operation of halfway houses.~~

~~§ 66-28. Board to adopt standards for Delinquency Prevention and Youth Development Act Programs.~~

PART II.

ADMINISTRATION.

**6 VAC 35-20-30. Legal base and regulatory history Purpose.**

~~Section 66-10 of the This regulation prescribes how, in accordance with Code of Virginia requires §§ 16.1-234, 16.1-309.1, 16.1-309.9 B, 16.1-309.10, 16.1-349, and 66-10, the Board and Department of Youth and Family Services to prescribe program standards and to Juvenile Justice will monitor the activities of the department in implementing the standards and approve residential and nonresidential programs that are part of the Commonwealth's juvenile justice system.~~

~~This chapter replaces and supersedes Department of Corrections Regulations Governing the Certification Process, 6 VAC 15-20-10 et seq.~~

**6 VAC 35-20-35. Guidance documents.**

*To help programs meet all regulatory and policy requirements, the department shall prepare guidance documents compiling all standards and policies applicable to each type of program and stating how compliance will be assessed. The guidance documents will serve as the basis for monitoring visits, certification audits, and the board's certification action.*

**6 VAC 35-20-37. Director's authority to take immediate administrative action.**

*Nothing in this regulation shall be construed to limit the director's authority to take immediate administrative action in accordance with law whenever (i) evidence is found of any life, health or safety violation or (ii) a program is not in substantial noncompliance with board-approved standards, policies, or local plan for Virginia [Juvenile] Community Crime Control Act programs. Such administrative action may include, but is not limited to (a) withholding funds; (b) removing juveniles from the program; or (c) placing the program on administrative probation for up to six months pending certification action by the board. In taking such action, the department shall notify both the program [the administrative entity that the program reports to,] and the board, in writing, of the reason for the administrative action, and the action the program must take to correct the situation.*

**6 VAC 35-20-40. Effective date. (Repealed.)**

~~These regulations shall become effective on September 9, 1992.~~

PART III.

AUDITS.

**6 VAC 35-20-50. Preaudit process.**

~~A. The certification unit manager shall develop a compliance audit schedule to cover a one-year period for dissemination to affected programs and staff.~~

~~Requests for rescheduling the compliance audit may be granted by the certification unit manager, provided the program requests the schedule change 90 days prior to the scheduled audit. Audits must occur before the expiration of the current certification.~~

~~B. Certification team members shall be appointed and notified of their appointment in writing by the appropriate regional administrator or the chief. Team members shall have completed certification training and shall be approved by the certification unit manager and the director or designee. The appropriate regional administrator or the chief shall be informed at least 10 days prior to the audit of any unacceptable team members. The appropriate regional administrator or chief shall be responsible for finding a replacement within five days of the audit and notifying the certification unit manager of that replacement.~~

~~C. The program administrator of the agency to be audited shall receive a list of team members and shall have the right to request alternate team members. The request shall be in writing and shall be approved by the appropriate regional administrator or chief assigning the team member. The appropriate regional administrator or chief shall be responsible for finding a replacement for the team member if approved.~~

~~D. The certification unit inspector shall notify the program administrator in writing at least 60 days in advance of the audit.~~

~~E. The certification inspector shall visit the program administrator prior to the audit to discuss the compliance audit process and procedures. Exceptions to this previsit shall be approved by the certification unit manager.~~

~~F. In instances where several programs are operated under the administration of a single commission, the certification unit manager and the program administrator may agree to an administrative review audit.~~

*A. At least six months in advance of an audit, personnel designated by the director shall notify each program to be audited of the scheduled audit date.*

*B. Up until 90 days before the scheduled audit, the program administrator may request that the audit be rescheduled. Except as provided in 6 VAC 35-20-100, audits, even if rescheduled, must occur before the expiration of the current certification.*

[C. Audit team members shall be appointed and notified of their appointment at least 30 days prior to the scheduled audit. The program administrator of the agency to be audited shall receive a list of the team members.]

*[G. D.] At least 10 days prior to the scheduled audit, the program administrator may, for just cause, request that one or more members of the audit team be replaced. Every reasonable effort will be made to comply with the request.*

[E. In instances where several programs are operated under the administration of a single commission, the certification team and the program administrator may agree to an administrative review audit.]

**6 VAC 35-20-60. Frequency of audits *Monitoring visits.***

A. All state and local facilities, programs and units operated by or affiliated with the Department of Youth and Family Services *subject to standards issued by the Board of Juvenile Justice* shall be audited every three years by the certification unit or a designee of the unit. More frequent audits may occur as required by the board *subject to periodic monitoring visits, scheduled and conducted in accordance with written department procedures. Whenever deemed necessary, the board may require that a monitoring visit be conducted of any program.*

B. All programs referenced in subsection A shall receive announced or unannounced documented interim audits by regional office staff or staff of the appropriate chief at least once every six months. More frequent audits may occur as required. *The department shall annually submit to the board a plan for monitoring programs, which shall provide for at least the following:*

1. *All residential programs, court service units and offices on youth [that are currently receiving state funding] shall receive at least one announced monitoring visit per year. A certification audit may satisfy the requirement of a scheduled monitoring visit. In addition, all residential programs and court service units shall receive at least one unannounced monitoring visit per year.*

2. *All nonresidential programs established under the Virginia Juvenile Community Crime Control Act (Article 12.1 of Title 16.1 of the Code of Virginia) shall be reviewed at least once every two years to determine compliance with the approved local plans and standards promulgated by the board.*

3. *Individual nonresidential programs shall receive monitoring visits according to the department's annual plan, which may provide for random sampling of programs in various*

categories. However, during each calendar year at least one nonresidential program in each Virginia Juvenile Community Crime Control Act (VJCCCA) plan shall receive a monitoring visit.

~~C. Exceptions to the frequency of audits as stated above shall be granted for the following reasons:~~

~~1. When a new program opens it shall undergo a documented preparatory audit by regional office staff or staff of the appropriate chief during the first six months of operation. A compliance audit shall be conducted between the sixth and twelfth month of operation as arranged by the certification unit manager and every three years thereafter. More frequent audits may occur as required by the board.~~

~~2. Exceptions to the required frequency of audits may be granted when circumstances beyond the control of the program staff prohibit compliance with the standards (for example, natural disaster). In no case shall the audit be postponed for more than six months after the original audit date.~~

**6 VAC 35-20-63. Reports of monitoring visits.**

~~[At each regular meeting of the board, the The] department shall report to the board in writing [all programs receiving any significant deficiencies identified through] monitoring visits [or other means since the last report and any significant areas where when] a program has failed to [~~address~~ take] needed corrective action.~~

**6 VAC 35-20-65. Reports required of life, health and safety violations.**

~~A. Whenever department personnel become aware of a life, health or safety violation, the department shall [take immediate action to correct the situation if the program has not already done so. Such action may include but is not limited to reporting the situation to Child Protective~~

~~Services, the State Police, or other enforcement authorities as appropriate, administrative probation, removal of residents or suspension of funding. The Department shall] report to the board no later than its next regularly scheduled meeting: (i) the nature and scope of the violation, and (ii) the action taken by the department or the program to correct the deficiency ; which may include but is not limited to administrative probation, removal of residents, or suspension of funding.~~

B. When a life, health or safety violation has not been adequately corrected, the board may take certification action up to and potentially including decertification.

**6 VAC 35-20-67. Disputes of noncompliance findings.**

Any program that is cited for noncompliance with board-approved standards, policies or local VJCCCA plan may:

1. Request a variance in accordance with 6 VAC 35-20-92; or
2. Appeal the finding, in writing, within 10 days of receiving notice of the finding, in accordance with department procedures and 6 VAC 35-20-94.

**6 VAC 35-20-69. New construction, expansion or renovation of residential programs.**

A. New construction, expansions and renovations in all juvenile residential programs, whether or not the facility or its sponsor is seeking reimbursement for construction or operations, shall conform to applicable provisions in the board's Regulations for Local Juvenile Residential Facility Construction and Reimbursement of Local Construction Costs (6 VAC 35-30), and Standards for Interagency Regulation of Children's Residential Facilities (22 VAC 42-10). In addition, the department shall consider the facility's degree of compliance with the Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities.

*B. The department shall not approve the housing of juveniles in a newly opened facility if the facility does not meet the requirements for a conditional certification as provided in ~~[the table at]~~ 6 VAC 35-20-100.*

*C. The department shall not approve the housing of juveniles in any portion of a facility that has been modified through expansion or renovation, until designated department staff visit the facility and verify that:*

- 1. The facility or applicable portion thereof complies with all applicable mandatory standards and physical plant standards; and*
- 2. The current certification issued by the board is appropriate to the status of its program and construction.*

**6 VAC 35-20-70. Agency narrative. (Repealed.)**

~~No later than 30 days prior to the audit, the agency/program administrator shall submit a written description of the program to be audited.~~

**6 VAC 35-20-75. Certification of individual programs.**

*A. The board shall individually certify all juvenile residential facilities, court service units and offices on youth [that are currently receiving state funding.]*

*B. The department shall schedule and conduct certification audits in sufficient time for the board to take action on the audit report before a program's current certification expires. The department shall publish procedures for naming audit team members, conducting on-site audits, determining compliance, conducting exit interviews, reviewing and approving corrective plans of action, and instructing programs how to request variances or appeal findings.*

*C. Upon the completion of the audit, the certification audit findings shall be reported to the program's administrator and sponsor and to appropriate department personnel. The program administrator or sponsor may appeal any of the certification audit findings in accordance with department procedures that shall specify (i) the timeframes for filing the appeal and for the department's response; and (ii) the department personnel responsible for considering the appeal.*

*D. Appeals of audit findings that cannot be resolved by the department shall be forwarded to the board for resolution as provided in 6 VAC 35-20-94.*

*E. Designated department personnel shall review and approve plans of action to address deficiencies identified in the audit report, and summaries of the approved plans of action shall be forwarded to the board along with the audit report.*

*F. Requests for variances shall be forwarded to the board along with the department's recommendation to approve or disapprove the variance.*

**6 VAC 35-20-80. [On-site audit procedures: ~~(Repealed.)~~]**

~~A. On-site audit procedures shall include the following:~~

- ~~1. Program administrator interview.~~
- ~~2. Facility tour.~~
- ~~3. Team orientation.~~
- ~~4. Data gathering.~~
- ~~5. Team voting on standards compliance.~~
- ~~6. Assessment and discussion of quality of life issues.~~

~~7. Predebriefing with the program administration to discuss audit findings.~~

~~8. Debriefing to inform program staff of audit findings.~~

~~B. Evidence of proof of compliance.~~

~~4. [A. The burden of providing evidence of proof of compliance with standards rests with the program staff. Documentation created once the audit has begun shall not be accepted.]~~

~~2. [B. It is permissible to provide additional documentation should the certification team request it; however, such documentation shall must already exist when the audit begins. Once the audit is concluded, any changes made by an agency cannot bring itself into compliance with a standard for the purpose of changing will not change the compliance rating determination for that a given standard but instead . The changes become part of the program's plan of action.]~~

~~3. The certification unit manager, the appropriate regional administrator or the chief where appropriate, and the director or designee shall be informed immediately of any serious problems or issues revealed to the team.~~

**6 VAC 35-20-90. Certification audit reports.**

~~A. Post reporting process.~~

~~[1. A. A report of the team's findings shall be submitted to the program administrator within 10 days following the compliance audit] ~~to the program administrator and the appropriate regional administrator or the chief of operations for learning centers where appropriate.~~~~

~~2. The program administrator may respond to the findings described in the report in one of three ways:~~

- ~~a. Submit a plan of action as described below.~~
- ~~b. Request a variance as described in subsection C.~~
- ~~c. Appeal the findings as described in subsection D.~~

~~{3. B. The program administrator with assistance from the appropriate regional office or chief shall develop a plan of action to correct all noncompliance findings. The plan of action shall be submitted to the appropriate regional administrator or chief department personnel as designated in department procedures within 15 days of receipt of the report of the team's findings. In exceptional situations, the certification unit manager designated department personnel may grant a 30-day extension to a program administrator for the development of an action plan.]~~

~~4. Each plan of action shall identify:~~

- ~~a. The deficiency or deficiencies.~~
- ~~b. The tasks required to correct each deficiency, including the steps necessary to prevent its recurrence.~~
- ~~c. The responsible agency and staff position, which may include the regional office.~~
- ~~d. The deadlines for the accomplishment of tasks.~~

~~5. Acceptable plans of action. Within five working days of receipt the appropriate regional administrator or chief shall review and upon finding the plan acceptable, approve the plan of action and forward it to the certification unit manager. Within five working days the certification unit manager shall review, and forward the plan of action to the director or designee with recommendations regarding certification and recommendations to deny or approve variance requests. Within five working days the director or designee shall sign the plan of action indicating review and approval and return it to the certification unit for inclusion in the audit report to the board.~~

6. Unacceptable plans of action.

a. ~~Regional office or appropriate chief level. Within five working days of receipt, the regional administrator shall review the plan of action and upon finding the plan unacceptable, return it to the program administrator with a cover letter clearly stating what areas are unacceptable and suggestions for appropriate corrective action. The program administrator shall have five working days in which to resubmit an acceptable action plan. If the resubmitted action plan is unacceptable, the appropriate regional administrator or chief shall forward it to the director or designee for referral to the board for action with a copy to the certification unit manager.~~

b. ~~Certification unit level. If a plan of action approved by the appropriate regional administrator or chief is unacceptable to the certification unit manager, the certification unit manager within five working days shall return the plan of action to the appropriate regional administrator or chief with a cover letter clearly stating what areas are unacceptable and suggestions for appropriate corrective action. The appropriate regional administrator or chief shall return the plan of action to the program administrator within five working days for revision. If the program administrator fails to submit an acceptable action plan within five working days, or the appropriate regional administrator or chief does not agree with the certification unit manager, the matter shall be referred to the director or designee for a decision or referral to the board for action.~~

c. ~~Director or designee level. If a plan of action is unacceptable to the director or designee, it shall be returned within five working days to the appropriate regional administrator or chief with a cover letter clearly stating what areas are unacceptable and suggestions for appropriate corrective action. The certification unit manager shall receive a copy. The appropriate regional administrator or chief shall then have three working days to return the~~

~~plan of action to the program administrator for revision. The program administrator shall have five working days to resubmit an acceptable plan of action. If an acceptable plan of action is not submitted within the required time frame, the director or designee shall refer the matter to the board for action.~~

~~B. Failure to submit an acceptable action plan. When a program administrator fails to submit an acceptable plan of action within the time frame specified in subsection A, the department shall refer the matter to the Board of Youth and Family Services with recommendations for action.~~

~~C. Variance request.~~

~~1. A variance may be requested in those instances where a facility is unable to comply with a standard or a portion of a standard.~~

~~2. A variance shall state:~~

- ~~a. The standard for which a variance is requested;~~
- ~~b. The justification for the request;~~
- ~~c. Any actions taken to come into compliance;~~
- ~~d. The person and agency responsible for such action;~~
- ~~e. The date at which time compliance is expected; and~~
- ~~f. The specific number of months requested for this variance.~~

~~3. Variance requests approved by the appropriate regional administrator or chief reviewed by the certification unit manager and approved by the director or designee shall be forwarded to the board for final approval. The board shall be made aware of any denied requests.~~

~~4. Should the program be subject to a compliance audit during the period of the variance, a copy of the approved variance shall be provided to the certification team during the on-site audit.~~

~~D. Appeal process:~~

~~1. If an appeal of any audit findings is being made, the program administrator shall attach the appeal request to any plan of action.~~

~~2. A plan to correct the deficiency should the appeal be denied shall be included in the plan of action.~~

~~3. Appeals shall be forwarded to the certification unit manager by the appropriate regional administrator or the chief along with the plan of action. The certification unit manager shall prepare a report on the appeal for review by the appropriate levels of appeal. The levels of appeal review are as follows:~~

~~a. The appropriate regional administrator or chief, upon review of plan of action, shall make every effort to resolve the appeal with the program administrator. If the program administrator is not satisfied, the appeal must be forwarded to the certification unit manager;~~

~~b. Chief of operations for information and evaluation;~~

~~c. Deputy director of administration and finance and the deputy director for programs;~~

~~d. Director for the Department of Youth and Family Services; and~~

~~e. Board of Youth and Family Services.~~

~~4. The certification unit manager shall distribute required documents within three working days of receipt of appeal documents. The administrators cited above shall complete required reviews or appeal decisions within five working days from receipt of the appeals.~~

~~5. Upon completion of each appeal level, the certification unit manager shall notify all parties involved of the appeal decisions within three workdays. The parties involved shall then have five working days from receipt of each decision notification to decide whether or not to appeal to the next level and to inform the certification unit manager of that decision in writing.~~

~~6. If the appeal is granted at the administrative level, the certification unit manager shall note this decision on the plan of action and the deficiency shall be removed from the audit report.~~

~~E. Board review of audit report. The certification unit manager shall submit audit reports at the first regular board meeting which occurs 75 days or more after the audit. The board shall be notified of any extensions granted.~~

~~Audit reports shall be distributed to the regional offices, and to the appropriate chief, after official board action for distribution to the applicable programs.~~

~~[C. The Department shall issue guidelines, including timeframes, that provide a process for reviewing and approving plans of corrective action, including those that are initially deemed unacceptable and in need of refinement, in time for the plans to be included in the audit report to the board. If an acceptable plan of action is not submitted within the required time frame, the director or designee shall refer the matter to the board for action. ]~~

~~[D.] Each certification audit report submitted to the board shall contain:~~

~~1. The program's name, administrator, sponsor, location and purpose;~~

2. *A summary of the program's target audience, its relation to other entities in the community and in the juvenile justice system, and other information relevant to its operation;*
3. *The date of the certification audit and the names of the audit team members;*
4. *Notation of all standards and policies for which noncompliance was found, including especially notation of any life, health or safety violations; a brief description of the circumstances, including extenuating and aggravating factors; and supplemented, when appropriate, with photographic evidence or other documentation; and*
5. *For each deficiency cited, a plan of corrective action that states:*
  - a. *The action taken or required to correct the deficiency and prevent its recurrence;*
  - b. *The person or agency responsible for the action; and*
  - c. *The deadline for taking the action.*

**6 VAC 35-20-92. Variance request.**

*Any request for a variance must be submitted in writing and shall include:*

1. *The nonmandatory standard for which a variance is requested;*
2. *The justification for the request;*
3. *Any actions taken to come into compliance;*
4. *The person and agency responsible for such action;*
5. *The date at which time compliance is expected;*
6. *The specific time period requested for this variance; and*

7. *A draft plan of corrective action describing how the program would meet the standard should the variance not be granted.*

*The department's recommendation to the board as to the certification action to be taken shall address each of the program's variance requests.*

[6 VAC 35-20-93. Waivers.

A. When a program has submitted a formal variance request to the board concerning a non-mandatory standard, the Director may, but is not required to, grant a waiver temporarily excusing a program from meeting the requirements of the standard when (i) the standard is not required by statute or by federal or state regulations other than those issued by the board of juvenile justice; (ii) non-compliance with the standard will not result in a threat to the life, health or safety of residents or staff; (iii) enforcement will create an undue hardship; and (iv) juveniles' care or services would not be adversely affected.

B. The waiver shall be in effect only until such time as the board acts on the variance request. The Board will act on the matter at its first meeting following notice from the Department that a waiver has been granted.

C. The Director shall promptly notify the board by first class mail of waivers granted, and the rationale for so doing.

D. A program will not be cited for non-compliance with the requirements of a standard during the time it operates pursuant to a waiver approved by the Director.]

**6 VAC 35-20-94. Appeal process.**

*If an appeal of any audit findings is being made, the program administrator shall attach the appeal request to any plan of action and submit the appeal to department personnel as designated in agency procedures within ~~[30-15]~~ days of written notification of the audit findings.*

*Department staff as designated in agency procedures shall make every effort to resolve the appeal with the program administrator within 15 days of receiving the appeal. If the program administrator is not satisfied, he may submit a written request to department staff as designated in department procedures within five days to have the matter reviewed by the Board of Juvenile Justice at its next scheduled meeting. The matter will be placed on the board's agenda pursuant to timeframes adopted by the board for submission of agenda items.*

**6 VAC 35-20-100. Board certification action ~~on~~ audit results.**

*A. The board may extend a current certification for a specified period of time, pending a certification audit and the completion of administrative reviews, provided the program meets all mandatory standards and the board and the department are not aware of any life, health or safety violations.*

*B. If a program's certification expires during a period when the board does not meet, the program's current certification status shall continue in effect until the board meets and takes certification action.*

*C. Once the board takes certification action, the board will issue a certificate or letter clearly identifying the program, the certification status, and the period of time during which the certification will be effective unless the certificate is revoked or surrendered sooner.*

~~§=D. Based upon the certification audit report and supplementary information submitted by the department and the program, the board shall make one of the following findings: will take certification action in accordance with Table 1 of this section. Depending on the program's status as identified in Column I and the conditions described in Column II, the board will take the certification action listed in Column III.]~~

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## FINAL REGULATIONS

Adopted April 9, 2003

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### Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text proposed at the PROPOSED stage. Underlined text indicates new text added since publication of the proposed regulation. Brackets indicate changes made since publication of the proposed regulation .

Language which has been stricken indicates proposed text for deletion.

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[ D. For purposes of calculating percentage of compliance, a standard will be identified either as a SECTION of the Virginia Administrative Code (§) or a SUBSECTION identified by an uppercase letter (A, B, C, etc.). Thus, whenever a section of a 6 VAC 35 regulation contains one or more subsections, each subsection constitutes a distinct standard. Subdivisions (identified by numerals (1, 2, 3, etc.) or lower case letters (a, b, c, etc) are not separate standards but are elements of the standard. When any element a, b. c or 1,2,3 is not met, the standard in which it appears is not met. ]

[TABLE 1.]

[Certification Actions Available to the Board]

<del><b>I. Current Certification Status</b></del>	<del><b>II. Current program conditions as identified through the certification audit</b></del>	<del><b>III. Resulting Certification Action</b></del>
<ul style="list-style-type: none"> <li>▪ <del>[New Program]</del></li> </ul>	<ul style="list-style-type: none"> <li>▪ <del>[100% compliance with all mandatory standards; AND</del></li> <li>▪ <del>At least 90% compliance with all nonmandatory standards; AND</del></li> <li>▪ <del>Has acceptable Plans of Action for all noncompliances</del></li> <li>▪ <del>NO life, health or safety violations.]</del></li> </ul>	<p><del>[Conditional Certification for up to six months]</del></p>
<ul style="list-style-type: none"> <li>▪ <del>[Conditional Certificate]</del></li> </ul>	<ul style="list-style-type: none"> <li>▪ <del>[100 % compliance with all mandatory standards; AND</del></li> <li>▪ <del>At least 90% compliance with all other</del></li> </ul>	<p><del>[One-year Certification]</del></p>

<ul style="list-style-type: none"> <li>▪ <del>[One-year Certificate]</del></li> <li>▪ <del>[Three-year Certificate]</del></li> </ul>		
	<ul style="list-style-type: none"> <li>▪ <del>[100% compliance with all mandatory standards; AND</del></li> <li>▪ <del>At least 95% compliance with all other standards, AND</del></li> <li>▪ <del>Has acceptable Plans of Action for all noncompliance; AND</del></li> <li>▪ <del>Has no life, health or safety violations; AND</del></li> <li>▪ <del>Has no systemic deficiencies.]</del></li> </ul>	<p><del>[Three-year Certification]</del></p>

<p>▪ <i>[Any program]</i></p>	<p>▪ <del><i>[Less than 100% compliance with all mandatory standards but has acceptable Plans of Action to address deficiencies; OR</i></del></p> <p>▪ <del><i>Less than 90% compliance with all other standards; OR</i></del></p> <p>▪ <del><i>Does not have acceptable plans of action for all noncompliance; OR</i></del></p> <p>▪ <del><i>One or more life, health or safety violations;</i></del></p> <p>OR</p> <p>▪ <del><i>Two or more systemic deficiencies.]</i></del></p>	<p><i>[Probation for up to six months]</i></p>
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	<ul style="list-style-type: none"> <li>▪ <del>[Less than 100% compliance with all mandatory standards without acceptable Plans of Action to address deficiencies; OR</del></li> <li>▪ <del>Less than 90% compliance with all other standards AND does not have acceptable Plans of Action to address deficiencies; OR</del></li> <li>▪ <del>The reasons cited in placing the program on probation or administrative probation have not been corrected to the point that the program would qualify for at least conditional certification.</del></li> <li>▪ <del>The program's staff have (i) committed, permitted, aided or abetted any illegal act in the program; or (ii) violated child abuse or neglect laws; or (iii) deviated significantly from the program or services for which a certificate was issued without prior approval from the board; or (iv) failed to correct any such deviations within the time specified by the board; or (v) falsified records.]</del></li> </ul>	<p><del>[Decertification or Denial of Certification (See § 16.1-309.9 B of the Code of Virginia)]</del></p>
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[E. A Conditional Certification for up to six months will be issued to a new program that:

1. demonstrates 100% compliance with all mandatory standards;
2. demonstrates at least 90% compliance with all nonmandatory standards;
3. Has acceptable Plans of Action for all noncompliances; and
4. Has NO unresolved life, health or safety violations.]

[F. A One-year Certification will be issued when a program currently holds a conditional certificate, a one-year certification, or a three-year certification, and:

1. Is in 100 % compliance with all mandatory standards;
2. Demonstrates at least 90% compliance with all other standards;
3. Has acceptable Plans of Action for all noncompliance;
4. Has NO unresolved life, health or safety violations; AND
5. Has No more than one systemic deficiency.]

[G. A Three-year Certification will be issued when a program currently holds a One-year Certification or a Three-year Certification and the program:

1. Is in 100% compliance with all mandatory standards;
2. Demonstrates at least 95% compliance with all other standards;
3. Has acceptable Plans of Action for all noncompliance;
4. Has no unresolved life, health or safety violations; AND
5. Has no systemic deficiencies.]

[H. Any program, in any certification status, will be placed on probation for up to six months when the program:

1. Is in less than 100% compliance with all mandatory standards but has acceptable Plans of Action to address deficiencies; OR
2. Demonstrates less than 90% compliance with all other standards; OR
3. Does not have acceptable plans of action for all noncompliance; OR
4. Has One or more unresolved life, health or safety violations; OR
5. Has Two or more systemic deficiencies.]

[I. Any program, regardless of current certification status, will be decertified or denied certification when:

1. The program is in less than 100% compliance with all mandatory standards without acceptable Plans of Action to address deficiencies; OR
2. The program demonstrates less than 90% compliance with all other standards AND does not have acceptable Plans of Action to address deficiencies; OR
3. The program, if on probation or administrative probation, has not corrected the circumstances that were cited in placing the program on probation or administrative probation to the point that the program would qualify for at least conditional certification, Or.
4. The program's staff have (i) committed, permitted, aided or abetted any illegal act in the program; or (ii) violated child abuse or neglect laws; or (iii) deviated significantly from the program or services for which a certificate was issued without prior approval from the board; or

(iv) failed to correct any such deviations within the time specified by the board; or (v) falsified records.]

1. The program is certified.
2. The program is placed on probationary status.
3. The program is decertified (or not certified if a new program).

~~The board may also place a program on administrative probation in emergency situations or continue an administrative probation status initiated by the director.~~

**6 VAC 35-20-110. Notice of ~~certification status~~ board action.**

~~A. Information regarding program status shall be made available to the appropriate departmental, state and local authorities Within two weeks of the board's actions. any certification action, a designated officer or agent of the board shall send formal notice of the board action to:~~

1. The program;
2. The program's sponsoring locality, commission or private operator, as applicable;
3. Designated department personnel; and
4. Other state and local authorities, as appropriate to the specific circumstances.

~~B. Administrators shall receive notification of their program's certification status in the following manner:~~

1. A certificate shall be issued by the board to each certified program.
2. A letter shall be issued by the board to programs that are placed on probationary status or decertified.

~~C. Public notice of certification status certificates and status letters shall be posted upon receipt~~

*B. The program shall post the certificate or letter issued by the board in a conspicuous place in the facility or program offices where it is visible to the public.*

*C. All variances approved by the board shall be made available at the program site to certification audit teams and department personnel conducting on-site visits.*

~~D. When a certifiable level of compliance is not achieved, the director or designee shall:~~

~~1. Notify the program administrator of the board's action and provide 15 days to respond in writing.~~

~~2. Send a copy of such notice to the person or entity authorized to take action.~~

**6 VAC 35-20-120. ~~Failure to achieve~~ *Actions following decertification or denial of certification.***

~~A. When a program fails to achieve operated by the department is decertified or denied certification, the following actions may be taken in compliance with statutes, policies, and procedures established by the board, the department and other state or federal agencies:~~

~~1. Department administered. If the Department of Youth and Family Services administers the program, actions may include, but are not limited to, the following:~~

~~a. the program administrator may reorganize the program, take necessary personnel actions and any other steps that will bring the program into compliance; b. will take whatever actions are necessary to qualify the program for at least a conditional certification within 90 days. If the program does not qualify for at least conditional certification within 90 days, the department may choose to close the program may be closed. The procedure for such action shall be in compliance with all board, department, state and federal regulations, policies, or requirements of~~

law. *If after 90 days the program has not met the requirements for at least conditional certification and the department has not closed the program, the board shall recommend to the Governor and the Secretary of Public Safety appropriate action to be taken under the circumstances.*

~~2. Locally or privately operated.~~ *If the B. When a program that is locally, regionally or privately operated is decertified or denied certification, the board and affiliated with the department of Youth and Family Services, may take any and all of the following actions may include, but are not limited to, the following as appropriate to the circumstances:*

~~a. A recommendation may be made to the person or entity authorized to take action,~~ *1. The sponsor may be required to reorganize the program structure or take necessary personnel action or any other steps as may be necessary to bring qualify the program into compliance with standards for at least a conditional certification within 90 days; and*

~~b. 2. The Director of the Department or the Board of Youth and Family Services may initiate proceedings, and under authority of, as applicable, reduce or suspend funding to the program in accordance with §§ 16.1-311, 16.1-322.1 through 16.1-322.3, and § 16.1-309.9 C, or § 66-30 of the Code of Virginia as well as any other applicable laws relating to child abuse to withdraw funding or to prohibit placement of children. or may withdraw the approval required by § 16.1-249 A (3) and (4) of the Code of Virginia; and~~

*3. The board may enter an order, pursuant to § 16.1-309.9 B of the Code of Virginia, prohibiting the placement of children in the program.*

**6 VAC 35-20-130. Grounds for decertification. (Repealed.)**

~~A. A facility or program may be decertified by the board at any time for the following reasons:~~

- ~~1. Staff of the facility or program have permitted, aided or abetted the commission of any illegal act in the facility or program;~~
- ~~2. Staff of the facility or program have engaged in conduct or practices which are in violation of statutes related to abuse or neglect of children;~~
- ~~3. Staff of the facility or program have deviated significantly from the program or services for which a certificate was issued without obtaining prior approval from the Board of Youth and Family Services, failing to correct such deviations within the time specified by the board, or both; or~~
- ~~4. Falsification of records.~~

~~B. If the program administrator wishes to appeal the decertification status, he shall forward the request to the appropriate regional administrator or chief for forwarding to the certification unit manager who shall, within five days, prepare a report on the appeal request at the first regularly scheduled board meeting following receipt by the board of the report from the certification unit manager.~~

~~C. A program or facility may also be placed on administrative probation at any time pending investigation of alleged occurrences of any or all of the items stated above, or in an emergency situation at the discretion of the director pending board approval at its next regularly scheduled meeting.~~

**6 VAC 35-20-140. Newly adopted standards. (Repealed.)**

~~A. When standards are adopted for newly developed programs or when new standards are adopted for existing programs, the programs affected shall be held responsible for~~

~~demonstrating compliance with the standards 90 days after the effective date of the new standards.~~

~~B. New programs to be certified under existing standards will undergo a preparatory audit by the regional office or staff of the appropriate chief within 90 days of accepting the first client (residential programs) or hiring of the director (nonresidential programs). A full audit by the certification unit staff will be conducted no more than six months after the preparatory audit.~~

**6 VAC 35-20-150. Mandatory standards for juvenile residential facilities.**

*The following standards, selected from Standards for Juvenile Residential Facilities (6 VAC 35-140) and Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42), are designated as "mandatory" as defined in 6 VAC 35-20-10. Programs that are subject to these standards must be in 100% compliance with the following standards in order to be approved to operate. Failure to comply with these mandatory standards will result in enforcement actions in accordance with the Code of Virginia and as set forth in this chapter.*

1. 6 VAC 35-140-190

2. 6 VAC 35-140-340

3. 6 VAC 35-140-460

[ 4. 6 VAC 35-140-660]

[5. 6 VAC 35-140-680]

[6. 6 VAC 35-140-690]

[4. 7.] 22 VAC 42-10-190

[5. 8.] 22 VAC 42-10-300

[~~6.~~ 9.] 22 VAC 42-10-330 A, B and E

[~~7.~~ 10.] 22 VAC 42-10-490 B and C

[~~8.~~ 11.] 22 VAC 42-10-700 A and B

[~~9.~~ 12.] 22 VAC 42-10-710 B through I

[~~10.~~ 13.] 22 VAC 42-10-720

[~~11.~~ 14.] 22 VAC 42-10-730 A and C

[15. 22 VAC 42-10-800]

[16. 22 VAC 42-10-960. C & D]

[~~12.~~ 17] 22 VAC 42-10-970

[~~13.~~ 18] 22 VAC 42-10-1000.

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